

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**March 24, 2009**

**The Rhode Island Ethics Commission held its 5th meeting of 2009 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, March 24, 2009, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair James V. Murray  
Ross Cheit, Vice Chair Frederick K. Butler  
J. William W. Harsch, Secretary Edward A. Magro**

**Also present were William J. Conley, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Administrative Staff Suzy Melo.**

**At 9:00 a.m., the Chair opened the meeting. The first order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for**

review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Robert Coulter, a member of the Tiverton Budget Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. The Petitioner clarified that he filed notice of recusal on March 12th, not on March 11th as set forth in his request letter. In response to Commissioner Butler, Staff Attorney DeVault stated that it would be permissible for the Petitioner to vote on the budget as a whole, including other line items regarding the School Committee; however, she noted the caveat set forth in the draft regarding matters that may impact his spouse. Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Robert Coulter, a member of the Tiverton Budget Committee.

The next advisory opinion was that of Danielle Coulter, a member of the Tiverton School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner's spouse, Robert Coulter, was present on her behalf. Mr. Coulter requested clarification as to whether his spouse would be prohibited from voting on a decrease in the stipend. Staff Attorney DeVault explained that sections 5(a) and 7(a) provide that an official cannot act if it is reasonably foreseeable that there would be either a financial gain or a financial loss, unless the proposed increase or decrease would only

apply to the official's successors in office. She noted that it would not be problematic to participate and vote on maintaining the status quo. Upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Danielle Coulter, a member of the Tiverton School Committee.

The next advisory opinion was that of Brian P. Stern, Esq., the Chief of Staff for the Governor of the State of Rhode Island. Commissioner Murray recused and sat in the audience. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. Commissioner Harsch inquired as to the rationale for the five years uninterrupted state service exemption. Legal Counsel Conley stated that he is not sure what the original intent was at the time it was drafted; however, he noted that it is a bright line regulation and he agrees that the exemption applies here. In response to Commissioner Cheit, Staff Attorney DeVault indicated that, while she did not look at the legislative history, the rationale may have been to not prohibit persons who had dedicated a certain amount of time to state service from rising to higher positions.

In response to Commissioner Cheit, the Petitioner represented that he did not have any discussions with members of the JNC, or others with decision-making authority in the process, regarding his application. Commissioner Harsch inquired whether the exemption

also applies to employees of the legislature. Staff Attorney DeVault referenced the Code of Ethics and stated that it does. Chair Binder commented that the section specifically applies to such positions on the staff of the general assembly. She expressed that, while she is comfortable with the first portion of the draft opinion, she is less comfortable with the part dealing with the delegation of duties to a subordinate. The Petitioner stated that a straight attorney-client relationship exists between the Governor and his Executive Counsel. Chair Binder inquired as to the JNC's role.

In response, Executive Director Willever recalled his own experience before the JNC as a judicial candidate and expressed that the process exists to provide for merit vetting of the many candidates. He stated that there is a subsequent check on the process in the form of Senate advice and consent. Commissioner Cheit suggested that the draft be amended on the bottom of page four so as to not suggest, without resorting to legislative history, that there was only one purpose behind the revolving door legislation. He also commented that he had seen a press report which stated that the Petitioner is requesting an exemption from the Commission. Commissioner Cheit clarified that the Petitioner is asking the Commission to certify that he falls under an exemption which already exists in the statute. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, it was unanimously

**VOTED: To adopt the draft opinion, as amended.**

**The next order of business was a motion to approve the minutes of the Open Session held on March 10, 2009. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on March 10, 2009.**

**The next advisory opinion was that of Patricia A. Coyne-Fague, Chief Legal Counsel to the Rhode Island Department of Corrections. Staff Attorney Leyden presented the Commission Staff recommendation. The Petitioner was present. Commissioner Harsch inquired if the Petitioner had discussed the situation with the Director of the Department of Corrections. The Petitioner advised that she discussed the issue with him prior to submitting her request letter, on which he was copied. She stated that neither of them thought it would be a conflict, and she indicated that he supports it. Chair Binder stated that she would like the opinion to reflect that the Chief Judge of the District Court makes the appointments. Staff Attorney Leyden noted that such language could be added to the third paragraph on page two.**

**In response to Commissioner Cheit, the Petitioner informed that there is more than one bail commissioner. Commissioner Cheit inquired as to the level of discretion the Petitioner would be exercising in her**

decisions as a bail commissioner. The Petitioner replied that there is no discretion with respect to holding some individuals, based upon the particular charge or if the person is a prior violator. As to others, she indicated that there is some discretion. She clarified that in her official capacity she does not represent people who are held at the ACI. The Petitioner represented that the Department does not have any say in who is sent to the ACI. Commissioner Cheit requested further information about the level of discretion that the Petitioner would exercise.

The Petitioner stated that, in general, only the amount of bail would be discretionary. She advised that some individuals must be held at the ACI, such as those charged with certain offenses and those who are in violation of prior bail or probation. She indicated that first offenders and those charged with petty offenses cannot be held. She stated that for the others falling in between those categories there is some discretion to set high or low bail. In response to Commissioner Cheit, the Petitioner represented that there is no grid or point system to follow. She further represented that her DOC job would not inform her with respect to her duties as a bail commissioner.

Commissioner Harsch also inquired as to the level of discretion the Petitioner would exercise with respect to the amount of bail. The Petitioner stated that it would depend upon the charge, the individual's history and his or her contacts with the community. In further response, the Petitioner stated that she does not appear

before the District Court on behalf of the DOC. She recalled only one instance in which the DOC appeared before the District Court, in an administrative appeal involving workers' compensation. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To adopt the draft opinion, as amended to reflect that the appointment is made by the Chief Judge of the District Court.

The next advisory opinion was that of Gary Mataronas, a member of the Little Compton Town Council. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. The Petitioner represented that he is not a realtor and would not rehabilitate the property and sell it. He indicated his intent to leave the property to one of his children. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Gary Mataronas, a member of the Little Compton Town Council.

The next order of business was New Business. Chair Binder acknowledged former Commissioner Richard E. Kirby and presented him with a plaque in recognition of his years of dedicated service.

The next order of business was discussion of the Complainant's role

in the complaint process. Staff Attorney Gramitt advised that the Commission asked the Staff to draft three options for amending Regulation 1011 regarding Informal Dispositions. He presented the Commission with the following proposals: a) Regulation 1011 as currently drafted; b) the Complainant receives notice of settlement only; c) the Complainant receives notice of settlement and may attend the hearing, but does not receive a copy of the settlement; and d) the Complainant receives a copy of the settlement prior to the hearing, but may not attend. Chair Binder stated that discussion of the proposals should be continued to the next meeting for a workshop, with the public allowed to provide written comments. She suggested that, with Option B, perhaps there should be separate tracks for settlements in which respondents admit to violations and for settlements in which they do not.

Commissioner Cheit inquired if there is any way to provide that the Complainant has the ability to know what is happening in the process. Staff Attorney Gramitt replied that there are no real events occurring in between the Notice of Initial Determination and the Complainant finding out that the matter is scheduled for a Probable Cause Hearing or Informal Disposition. In further response, Staff Attorney Gramitt noted that there is no limit on the amount of time that can pass between probable cause and settlement. Commissioner Cheit indicated that Phil West had previously expressed concern that the Complainant does not know what is happening during the process. Staff Attorney Gramitt recalled that



only two cases, one of which is Irons, continued for a long time past probable cause. He explained that when Complainants inquire, they are informed of as much as they can be, namely that the matter will proceed to either an adjudication or a settlement. He added that in some cases the Staff cannot necessarily tell the public the reason for perceived delay, which can include strategic reasons.

Commissioner Cheit questioned whether the proposal should include some type of reporting requirement whereby a Complainant would not have to call and inquire as to the status. He asked that such a proposal be considered for the workshop. Commissioner Butler noted that there would be regular reports to the Commission, in the form of the Director's Report, which would indicate if a case were lying dormant. Commissioner Cheit stated that the Director's Report is not in Executive Session and reports only the number of pending complaints, not their status. Commissioner Butler commented that he could not imagine that the Commission would let a matter go on for so long without some inquiry. Chair Binder noted that, while it is not presently an issue, it could be in future administrations.

Executive Director Willever informed that he keeps an internal caseload docket and has conferences with the Staff Attorneys regarding the movement of cases. He advised against adopting a regulation where a problem does not exist. Commissioner Cheit stated that he is considering a status report to the Complainant when a long period of time elapses. In response to Staff Attorney Gramitt,

**Chair Binder indicated that the workshop session should be held in a month to allow for receipt of written public comment. Staff Attorney Gramitt stated that the proposals submitted could be posted on the website and the Commission could invite written public comment.**

**\*Workshop session subsequently postponed, as noted below.**

**At approximately 10:08 a.m., upon motion made by Commissioner Harsch and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:**

**a.) Motion to approve minutes of Executive Session held on  
March 10, 2009.**

**b.) Status Update:  
William V. Irons v. The Rhode Island Ethics Commission,  
No. 2008-335-M.P. and 2009-01-M.P.**

**c.) Status Update:  
Jason E. Ferrell v. Frank Caprio, Jr., et al.,  
U.S. District Court C.A. No.08-378S**

**d.) Motion to return to Open Session.**

**Commissioner Cheit left the meeting at approximately 10:08 a.m., immediately prior to the start of the Executive Session.**

**The Commission returned to Open Session at approximately 10:25 a.m. The next order of business was a motion to seal minutes of the Executive Session held on March 24, 2009. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on March 24, 2009.**

**Chair Binder reported that the Commission approved minutes of the Executive Session held on March 10, 2009 and received status updates on William V. Irons v. The Rhode Island Ethics Commission and Jason E. Ferrell v. Frank Caprio, Jr. Chair Binder also reported that the workshop session would be postponed until May. \***

**The next order of business was a Legislative Update. Staff Attorney Gramitt informed that House Bill 5510, which is sponsored by Representatives Trillo and Gablinske, is scheduled for hearing on March 26th. He stated that the bill would add section 5(p) to the Code of Ethics, prohibiting legislators who are employed by a government employees' union from participating or voting on legislation regarding government employees' rights or benefits. Chair Binder suggested waiting to see what happens with the bill.**

The next order of business was the Director's Report. Executive Director Willever reported that there are five advisory opinions and two complaints pending, and one formal APRA request has been granted since the last meeting. Director Willever introduced Suzy Melo, a new member of the Administrative Staff, and advised that the new investigator, Gary Petrarca, will begin his employ on March 30th. He stated that the 2008 Financial Statements were mailed on March 17th. Director Willever noted that Staff Attorney Gramitt will provide an ethics presentation at the Bar Association's annual meeting. In response to Chair Binder, Director Willever stated that, as of last week, two lists have been provided to the Governor with respect to vacancies on the Commission. He indicated that the Governor is aware of the need to act on the matter.

At approximately 10:40 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

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J. William W. Harsch

Secretary